

Did the Administrative Law Judge exceed his jurisdiction in designating Virendra C. Patel, M.D., as the authorized treating physician without allowing respondent an opportunity to provide a list of three physicians as required by K.S.A. 44-510(c)(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds for the reasons set out previously in Briceno v. Wichita Inn West, Docket No. 211,226 (Feb. 27, 1997) that the issue raised by respondent is not a jurisdictional issue and the Appeals Board is not authorized to review the preliminary Order at this stage of the proceeding.

Claimant sought additional medical treatment and filed an Application for Preliminary Hearing to request that Dr. Patel be redesignated as the treating physician. At the conclusion of the evidentiary hearing, the Administrative Law Judge granted claimant's request.

Respondent argues that the Administrative Law Judge violated provisions of K.S.A. 44-510(c)(1) which states in pertinent part as follows:

“If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.”

As above indicated, the Appeals Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review.

Respondent, citing K.S.A. 44-551(b)(2)(A), alleges the Administrative Law Judge exceeded his jurisdiction in naming Dr. Patel as the authorized treating physician. However, the majority of the Appeals Board views the issue of jurisdiction differently. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

“Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.” (Citations omitted.)

Whether the administrative law judge must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge. K.S.A. 44-534a gives the administrative law judge jurisdiction to decide issues concerning medical

treatment at a preliminary hearing. As the administrative law judge had the jurisdiction to decide this question, he has the jurisdiction to decide it wrongly.

WHEREFORE, the Appeals Board finds and concludes that the appeal by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issues raised and the Order by the Administrative Law Judge dated October 24, 1996, should, and does remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Philip J. Bernhart, Coffeyville, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director